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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,142	08/18/2003	Kevin Patrick Sheahan		7027

7590 09/27/2005  
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EXAMINER

MILLER, BENA B

ART UNIT PAPER NUMBER

3725

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/643,142

Applicant(s)

SHEAHAN ET AL.

Examiner

Bena Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 1 and 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

*Bena B. Miller*

### **DETAILED ACTION**

Applicant's election without traverse of claims 2-4 in the reply filed on 08/30/05 is acknowledged. Applicant's attention is directed below to the Detailed Office Action on the merits of the claims.

#### ***Specification***

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-4 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language that is too numerous to point out in every instance. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited. The following examples are provided for the applicant use in making corrections wherever appropriate but not specifically pointed to.

Regarding claim 2, it is not clear what is meant by the outward protruding flanges locally removed from one end of the horizontal member, as recited in line 3. It is not

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clear which flanges (i.e., the horizontal flanges or vertical flanges), recited in line 5, protrudes in an opposite outward direction from a central vertical axis. It is not clear what is encompassed by the phrase "mechanically fastened".

Further regarding claim 2, the examiner is unsure if applicant is claiming the combination of the shelf assembly and the U-shaped vertical member or the subcombination of the shelf assembly, only. This in turn, is because while line 1 of the claim appears to indicate that applicant's intention is to claim only the shelf assembly, other portions of the claim recite limitations which are dependent on the U-shaped vertical member (Note claim 2, line 4, for example only). In this Office Action, the examiner presumes that the applicant's intention is to prosecute the subcombination of the shelf assembly, in order that the claims are given their broadest reasonable interpretation. Accordingly, all additional limitations that are dependent on the U-shaped vertical member are not considered further structurally limiting with respect to the claimed device.

Regarding claim 3, it is not clear if the "horizontal member" in line 2 the same as the "horizontal member" in line 1 of claim 2. There is lack of antecedent basis for the limitation "each of said outward protruding flanges". Lines 3-7 are confusing.

Regarding claim 4, it is not clear how the functional limitations of the claim further structurally limit the claim assembly of claim 2. It appears that the claim recites a method.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 2-4, as best as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Kluge et al (US Patent 6,161,709).

The device of Kluge reads on the structural limitations of the claims including a horizontal U-shaped member with a pair of opposite protruding flanges (16; fig. 5) and predrilled holes in the protruding flanges of the horizontal member (fig. 5). It should be noted that the Examiner considers the functional recitations of the claim 4 to be inherent in the device of Kluge et al.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bena Miller  
Primary Examiner  
Art Unit 3725

bbm  
September 22, 2005